

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DON G. OWEN)

For Appellant: Don G. Gwen, in pro. per.
For Respondent: Kathleen M. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Don G. Owen against a proposed assessment of additional personal income tax in the amount of \$236.00 for the year 1976.

Appeal of Don G. Owen

The sole issue for determination is whether appellant qualified as a head of household for 1976.

Appellant filed his California personal income tax return for 1976 as head of household, claiming that his children and grandchildren qualified him for that status. Appellant's children and grandchildren visited him during 1976, but none of them lived with him during that year. Respondent determined that appellant did not qualify for head of household status in 1976 because none of his children or grandchildren occupied his household for the entire year.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code, which provides, in pertinent part:

[A]n individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year and ...

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A son, ... daughter ... of the taxpayer, or a descendant of a son or daughter of the taxpayer. ...

In prior appeals we have held that the statute, which requires that the taxpayer's home constitute the principal place of abode of another individual for the "taxable year," means that such person must occupy the household for the taxpayer's entire taxable year. (Appeal of Dennis Clyde Hamilton, Cal. St. Bd. of Equal., April 6, 1978; Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; see also, Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b) (1).) In the present appeal, none of the persons which appellant urges qualified him for head of household status physically occupied appellant's household for the entire taxable year. Although respondent's regulations provide for a "temporary absence due to special circumstances," the record in this appeal does not indicate the existence of any special circumstances.

Appeal of Don G. Owen


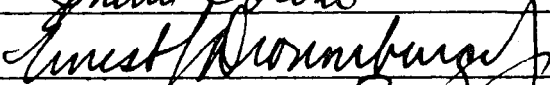
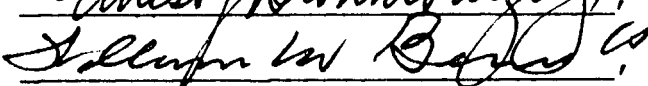
Appellant nevertheless relies upon the fact that he is forced to maintain his residence as a home for his children and grandchildren because they repeatedly visit him. Notwithstanding this circumstance, they did not occupy appellant's household for the entire taxable year, and thus did not qualify him for head of household status. Consequently, we must sustain respondent's action in this matter.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Don G. Owen against a proposed assessment of additional personal income tax in the amount of \$236.00 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of March , 1980, by the State Board of Equalization.

, Chairman
, Member
, Member
_____, Member
_____, Member